

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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WORDTECH SYSTEMS INC., a
California corporation,

Plaintiff,

v.

NO. CIV. S 04-1971 MCE PAN

MEMORANDUM AND ORDER

INTEGRATED NETWORK SOLUTIONS
CORP. DBA INTEGRATED NETWORK
AKA INTERNET NETWORK STORAGE
COMPANY, a Nevada corporation,
NASSER KHATEMI, an individual,
HAMID ASSADIAN, an individual,
and DOES 1-50,

Defendants.

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Defendants Integrated Network Solutions Corp. ("INSC"),
Nasser Khatemi ("Khatemi"), and Hamid Assadian ("Assadian"), ask
this Court to dismiss the complaint filed by Plaintiff Wordtech
Systems Inc. ("Wordtech") based upon improper venue. For the
reasons discussed below, Defendants' motion is GRANTED.

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BACKGROUND

Wordtech filed its complaint on September 22, 2004, in the Eastern District of California. Wordtech alleges that Defendant INSC (a Nevada corporation) and Defendants Khatemi and Assadian (individual corporate employees residing in the Central District of California) infringed two of its patents: U.S. Patent Nos. 1,141,298 and 1,532,198. On December 30, 2004, Defendants filed a motion to dismiss for improper venue.

STANDARD

Venue in patent cases is governed by 28 U.S.C. § 1400(b), which states:

Any civil action for patent infringement may be brought in [1] the judicial district where the defendant resides, or [2] where the defendant has committed acts of infringement and has a regular and established place of business.

28 U.S.C. § 1400(b). As to corporate defendants, the term "resides" is defined by 28 U.S.C. § 1391(c), which states that such a defendant resides in any district that it is subject to personal jurisdiction. VE Holding Corp. v. Johnson Gas Appliance Co., 917 F.2d 1574, 1580 (9th Cir. 1990); 28 U.S.C. § 1391(c). Additionally, pursuant to 28 U.S.C. § 1391(d), an alien corporation "may be sued in any district." VE Holding, 917 F.2d at 1579.

Venue with regard to "corporate employees charged with personal liability for acts taken as individuals, not as the

1 alter ego of the corporation, does not flow automatically to
2 forums in which venue is proper as to the corporation." Hoover
3 Group, Inc. v. Custom Metalcraft, Inc., 84 f.3d 1408, 1410 (Fed.
4 Cir. 1996); cf. Minnesota Mining & Mfg. Co. v. Eco. Chem, Inc.,
5 757 F.2d 1256, 1265 (Fed. Cir. 1985) (providing an example of a
6 corporate alter ego). Indeed, when "the cause of action is
7 personal to the individual defendant, the venue requirement must
8 be met as to that defendant." Hoover, 84 f.3d at 1410.

9 Finally, while a court may consider facts outside of the
10 pleadings when addressing a Federal Rule of Civil Procedure¹
11 12(b)(3) motion, it is not required to do so, and, in its
12 discretion, can require the parties to expressly plead all
13 necessary information. Murphy v. Schneider National, Inc., 362
14 F.3d 1133, 1137 (9th Cir. 2004); Hoover, 84 f.3d at 1410.

16 ANALYSIS

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18 Venue is based on the facts alleged in a well-pled
19 complaint. Hoover, 84 F.3d at 1410; see Dody v. Brown, 659 F.
20 Supp. 541, 544 n.2 (W.D. Mo. 1987); McGhan v. F.C. Hayer Co., 84
21 F. Supp 540, 541 (D. Minn 1949) (holding that the plaintiff must
22 plead "ultimate facts that sufficiently allege venue so as to
23 sustain the Court's jurisdiction").

24 In its complaint, Wordtech only addressed venue generally.
25 (Pl's Compl. at 2:21-22; 4:16-20.) Notably, the complaint does
26 not allege any facts regarding Defendants' relationship to the

27
28 ¹ Unless otherwise stated, all further references to a
"Rule" or "Rules" are to the Federal Rules of Civil Procedure.

1 Eastern District of California. Consequently, the Court finds
2 that Wordtech's complaint is insufficient to find the Eastern
3 District as the proper venue in this case. Hoover, 84 f.3d at
4 1410; McGhan, 84 F.Supp at 541.

5 Accordingly, the Court has elected not to exercise its Rule
6 12(b) (3) discretion with respect to extra-pleading information.
7 As such, in order to sustain the Eastern District of California
8 as a proper venue, Wordtech must plead its basis for venue - as
9 to each defendant - specifically within its complaint.

10 To date, Wordtech has failed to do so. Consequently,
11 Defendant's motion is granted, and Plaintiff's complaint is
12 dismissed without prejudice. Plaintiff is granted leave to amend
13 its complaint and has 30 days from the date this order is filed
14 to file an amended complaint with the Court.

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16 **CONCLUSION**
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18 For the aforementioned reasons, Defendants' motion to
19 dismiss Plaintiff's complaint is GRANTED. Plaintiff's complaint
20 is dismissed without prejudice, and Plaintiff is granted leave to
21 amend as specified above.

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23 IT IS SO ORDERED.

24 DATE: January 7, 2005

25 /S/ Morrison C. England, Jr.
26 MORRISON C. ENGLAND, JR.
27 UNITED STATES DISTRICT JUDGE
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